

Exhibit E

Subject: RE: VirtaMove v. IBM - Third Party Witnesses Identified in VirtaMove's Initial Disclosures
Date: Monday, April 28, 2025 at 7:01:08 PM Central Daylight Time
From: Burke, Katharine
To: Peter Tong, Dou, Yimeng, rak_virtamove@raklaw.com, DL HPE-VirtaMove, EXT Doan, Jennifer (Amazon), EXT Thane, Josh (Amazon)
CC: #IBM-VirtaMove KE Team, Andrea Fair, Chad Everingham
Attachments: image001.png

Counsel,

We write in response to your email.

Your email is not correct. HPE offered, as a compromise, to consider remote depositions of Mr. O'Connor, Mr. Woodward, Mr. O'Leary, and Mr. Huffman. See my April 7 email. You never responded.

Regarding your new offer late last week directed to IBM, Defendants cannot agree to a single 7-hour deposition in both cases for Mr. O'Connor, Mr. Woodward, or Mr. O'Leary. We have conferred with IBM and, solely as a compromise, can agree to remote depositions. For Mr. O'Leary, who we understand will be designated on topics in at least HPE's 30(b)(6) notice, each party should get 7 hours under the Discovery Order. For Mr. O'Connor and Mr. Woodward, we agree to coordinate our questioning and limit the depositions to 10 hours total for both defendants, e.g., 7 hours on day 1 and 3 hours on day 2. We are considering a single 7-hour deposition of Mr. Huffman.

We appreciate your offer of May 14 for Mr. O'Leary. We are working on schedules on our end. In the meantime, please provide a second date for him, and please confirm that he will produce documents more than a week before May 14.

Finally, your extensive delay in providing dates for your other witnesses/declarants is highly prejudicial and inexplicable given your prior representations. By Wednesday, April 30, please provide dates for the depositions of Mr. Huffman, Mr. O'Connor, and Mr. Woodward—regardless of whether you intend to call them at trial—and confirm they will produce documents at least a week before their depositions.

Best regards,

Katharine Burke
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From: Peter Tong <ptong@raklaw.com>
Sent: Thursday, April 24, 2025 8:00 PM
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Cc: #IBM-VirtaMove KE Team <IBM-VirtaMoveKETeam@kirkland.com>; Andrea Fair <andrea@millerfairhenry.com>; Chad Everingham <chad@millerfairhenry.com>
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[EXTERNAL EMAIL]

Adding HPE's counsel so that they can coordinate with IBM.

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From: Peter Tong <ptong@raklaw.com>
Date: Thursday, April 24, 2025 at 6:57 PM
To: "Dou, Yimeng" <yimeng.dou@kirkland.com>; "rak_virtamove@raklaw.com" <rak_virtamove@raklaw.com>
Cc: #IBM-VirtaMove KE Team <IBM-VirtaMoveKETeam@kirkland.com>; Andrea Fair <andrea@millerfairhenry.com>; Chad Everingham <chad@millerfairhenry.com>
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YiMeng,

We are having some difficulty in coordinating scheduling due to HPE's unreasonable demand that these same witnesses appear for deposition in Texas. We appreciate that IBM has acted reasonably in noticing the deposition of Huffman, O'Leary, and Woodward by "Remote Means."

Greg O'Connor has been served by HPE. Greg can be made available for one remote deposition across the HPE and IBM cases. As a preliminary matter, he objects the dates, and we are waiting to hear back on his availability. But we object to any effort by IBM and HPE to depose him twice in different states. The last time I heard from him, he was not yet served with IBM's subpoena. He waives service of IBM's subpoena if IBM agrees to one remote depo for IBM/HPE limited to 7 hours.

Of the three Canadian witnesses, Paul O'Leary and Mark Woodward object to the jurisdiction of IBM's subpoena. Nonetheless, they are willing to voluntarily sit for a remote deposition and willing to voluntarily do a document search, if agreement can be reached that depositions across the IBM and HPE cases is limited to 7 total hours for O'Leary and 7 total hours for Woodward. O'Leary will volunteer on May 14. We are still awaiting Woodward to confirm a voluntary date.

For these three witnesses above, if IBM can convince HPE withdraw its unreasonable demand that these witnesses travel to Texas just to sit for a deposition, please do so, as this will greatly facility our ability to provide dates.

Otherwise, we are having difficulties with Huffman, who also objects to the jurisdiction of IBM's subpoena. I will update you as soon as I can. If VirtaMove is unable to have Huffman to voluntarily sit for a deposition and search for documents, then VirtaMove will not call him at trial.